IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Civil Application No.37 of 2004

In

Second Appeal No.694 of 2003

1. Laxman Mahadev Pawar

1A. Smt.Abai Laxman Pawar

2. Dhanraj Laxman Pawar

3. Vilas Laxman Pawar

4. Pratap Laxman Pawar

5. Shahsikala Mohan Suryavanshi

6. Mangala Ramchadnra Suryawanshi ... Applicants

V/s

1. Vishwanath Khandu Pawar

2. Anand Sadahsiv Pawar

3. Nandkumar Khandu Pawar

4. Ratnaprabha Vasantrao Salunkhe

5. Baby Shankar Salunkhe .. Respondents

Mr.Vishwanath Talkute for Applicants

Mr.R.R.Bhosale for Respondent no.1

CORAM:S.R.SATHE,J.

DATED:2nd March 2006

P.C.:-

1. Heard both the learned Advocates.

2. The applicants, heirs of original defendant no.1 have filed this application for condoning the delay of 1 year and 3 days in filing the Second Appeal.

3. According to the Applicants after the judgment and order of the District court, parties were negotiating for compromise. Admittedly the decree was for partition and separate possession and both the parties to the present application were to get some share in it. It is applicant's case that present Respondent no.1 gave impression to settle the matter out of Court and the parties were considering as to whether the dispute can be resolved by paying some compensation to the Respondent no.1. In fact, for that purpose Respondent even told the applicant not to file appeal in High Court. It is Applicant's case that relying on the words of the Respondent no.1, they did not take any further steps and for that matter they even did not file an application for getting certified copy of the judgment and order passed by the District court, as according to them such copy was not necessary as the matter was to be settled.

4. It is applicant's case that on 18-10-2002 when they received notice issued under Order 21 Rule 22 by the Executing Court in Darkhast proceedings No.134/2002, the applicant no.4 took search of the said Darkhast proceedings and noticed that Respondent no.1 has in fact filed the said

Darkhast. Applicant thereafter filed an application on 9-1-2003 for getting certified copy of first appeal. However, the copy received by applicant was misplaced. The said copy was received by him on 23--2003. He therefore filed another application for getting certified copy on 25-2-2003 and after receipt of the same filed the present appeal and in all this process there was delay as mentioned above. The applicants have therefore prayed that delay be condoned.

5. The Respondent no.1 filed affidavit] in reply and denied the averments made in the application and submitted that no talks were going on for compromise and the application be dismissed as there is no sufficient cause to condone the delay.

6. Admittedly, parties to the present application are close relatives and original suit was filed for partition and separate possession of the house property bearing CTS No.2565. It is also not in dispute that first appellate court had decreed the said suit and held that the plaintiff and defendant no.3 and 4 are entitled to 1/3rd share in the suit property. According to the applicants, considering the nature of the suit property actual partition of the same was not possible and as such talks regarding settlement were going on. We cannot ignore the fact though the parties were litigating for quite long time. Ultimately the share was granted to the plaintiff and defendant nos.3 and 4, so there was possibility of parties deciding amongst themselves as to

how the property should be actually partitioned. Otherwise there was no reason for the present applicants not to file the second appeal. Though the Respondent has denied to have any such talks as alleged by the applicants, having regard to the peculiar facts of the case. I am inclined to accept the version of the applicants. Incidently it must be noted that the talks regarding settlement were even going on during pendency of the present application. This can be seen from the order passed by this Court (Coram: Anoop V. Mohta J) on 22-5-2005 in presence of both the learned Advocates, wherein it is stated "Interim order to continue upto 16-1-2006 as settlements talks are on". So, taking into consideration all these facts and circumstances I think that the applicants have shown sufficient cause for condoning the delay.

7. Hence the delay is condoned subject to payment of cost of Rs.2,000/- to the Respondents. Cost to be paid within 8 days from today. Payment of cost is a condition precedent for further registration of the appeal.

(S.R.SATHE,J.)